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March 9, 2015

The Honorable Chester A. McPherson, Acting Commissioner
D.C. Department of Insurance, Securities and Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

Re: In the Matter of Surplus Review and Determination of Group Hospitalization and Medical Services, Inc., Order No. 14-MIE-012 (D.C. Dep't of Ins., Secs. & Banking Dec. 30, 2014)

Dear Interim Commissioner McPherson:

On December 30, 2014, the Commissioner determined that Group Hospitalization and Medical Services, Inc.'s ("GHMSI's") 2011 surplus was excessive under the Medical Insurance Empowerment Amendment Act ("MIEAA"), and subsequently ordered the company by March 16 "to submit a plan for dedication of the excess [surplus] to community health reinvestment in a fair and equitable manner." D.C. Code § 31-3506(g)(1). The Commissioner must then determine whether the company has submitted such a plan. *Id.* § 31-3506(i).

While MIEAA does not provide a process for determining whether the company has submitted a plan satisfying the legal standards, the Commissioner has discretion to take steps to assure himself that these standards are met. We are writing now to respectfully suggest that the Commissioner accomplish this by exercising his discretion to convene a public hearing and receive oral and written comments on the plan GHMSI submits. We think a public hearing would be useful to the Commissioner in two important ways: it may assist him in making the legal determinations MIEAA requires; and it may help inform him whether the plan has fairly assessed the public interest that is at stake.

First, a public hearing would assist the Commissioner in satisfying himself that the plan meets the legal requirements of MIEAA, including: (1) that it is composed of "expenditures," (2) that it dedicates the excess surplus to "community health reinvestment," and (3) that it does so "in a fair and equitable manner."

MIEAA defines "community health reinvestment" as "expenditures that promote and safeguard the public health or that benefit current or future subscribers, including premium rate reductions." *Id.* § 31-3501(1A). The statute also clarifies that the plan "may—or may not—benefit current subscribers." *D.C. Appleseed Ctr. for Law & Justice v. D.C. Dep't of Ins., Secs., & Banking*, 54 A.3d 1188, 1203

(D.C. 2012) (the plan “may consist entirely of expenditures for the benefit of current subscribers of the corporation” (quoting D.C. Code § 31-3506(g)(2))). As the Commissioner indicated in his December 30, 2014, Decision and Order, determining what constitutes “community health reinvestment” under MIEAA requires considered analysis. For example, while such reinvestment

expressly includes premium rate reductions, and there is no doubt that premium rate reductions benefit subscribers[] . . . there is no practical way to distinguish between a rate reduction made for competitive purposes versus one made to benefit subscribers. . . . Reductions for competitive purposes arguably do not benefit subscribers to the extent that subscribers may obtain similar rates elsewhere in the market.

In the Matter of Surplus Review and Determination of Group Hospitalization and Medical Services, Inc., Decision and Order, Order No. 14-MIE-012 60–61 (D.C. Dep’t of Ins., Secs. & Banking Dec. 30, 2014)(citation omitted). Particularly in light of the fact that GHMSI has indicated an intention to apply the whole of the excess surplus to premium reductions, we think a public hearing on GHMSI’s plan would be useful to the Commissioner in carefully reviewing GHMSI’s proposed plan to determine if it is composed of “expenditures” that constitute “community health reinvestment” under MIEAA.

While MIEAA does not define “fair and equitable,” the legislative history is instructive as to the meaning. It is clear that the Council adopted MIEAA because it was concerned about GHMSI’s role in addressing the District’s unmet healthcare needs. The committee observed “[t]he health needs of the community are acute and extensive and would be well-served by a non-profit hospital and medical services corporation that is health accountable to its non-profit, public health mission.” D.C. Council, *Report on Bill 17-934, the Medical Insurance Empowerment Amendment Act of 2008*, at 14 (Oct. 17, 2008). Thus, to be consistent with the Council’s intent, any plan to provide for reinvestment must fairly and equitably address healthcare needs in the community. To determine whether the plan accomplishes this, it will be necessary to understand the scope of those needs and how excess surplus dollars can address them effectively. This can best be done by hearing from healthcare professionals, experts, and the public on these issues.

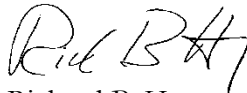
In addition to assisting the Commissioner to resolve a legal matter, we think a public hearing is appropriate given that the plan will focus on reinvesting a public asset—excess surplus—in public health. As the Commissioner has recognized, MIEAA “manifests the District of Columbia’s strong public interest in ensuring that GHMSI fulfills its obligation to ‘engage in community health reinvestment to the maximum feasible extent consistent with financial soundness and efficiency.’” *In the Matter of Surplus Review and Determination of Group Hospitalization and Medical Services, Inc.*, Order on GHMSI’s Motion for Reconsideration and Coordinated Proceedings with Maryland and Virginia, and on D.C. Appleseed’s Request for Briefing Schedule, Order No. 14-MIE-014 4 (D.C. Dep’t of Ins., Secs. & Banking Mar. 2, 2015). The D.C. Court of Appeals also acknowledged that MIEAA is the culmination of efforts on behalf of the public to hold GHMSI accountable to its obligations, including “to use its . . . excess surplus to serve the purpose of promoting health in its service areas.” *D.C. Appleseed*, 54 A.3d at 1193 (quoting Memorandum from Robert J. Spagnoletti, Attorney General, Robert Bobb, City Administrator 8 (Mar. 4, 2005)). The public has a great stake in how GHMSI’s excess surplus is reinvested, and it would be fitting that it have an opportunity to be heard.

DC Appleseed believes a public hearing on GHSMI's plan for reinvesting excess surplus will assist the Commissioner in determining whether that plan satisfies MIEAA, and would be entirely appropriate given the significant public interest in this matter. We thank the Commissioner for considering our request.

Sincerely,



Walter Smith, Executive Director
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cc: Mr. Philip Barlow, Associate Commissioner for Insurance
D.C. Department of Insurance, Securities and Banking

Mr. Adam Levi, Assistant General Counsel
D.C. Department of Insurance, Securities and Banking